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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,440	08/24/2004	Eberhard Ammermann	3165-107	2309
6449	7590	02/22/2008		
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			EXAMINER PURDY, KYLE A	
			ART UNIT 1611	PAPER NUMBER
			NOTIFICATION DATE 02/22/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

## Office Action Summary

Application No.

10/505,440

Applicant(s)

AMMERMAN ET AL.

Examiner

Kyle Purdy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08/24/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-9 and 11-13 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Restrictions*

1. Restriction is required under 35 U.S.C. 121 and 372.
2. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.
3. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-6 and 11, drawn to a fungicidal mixture comprising prothioconazole and at least one other fungicidal compound or its salts or adducts, selected from the group consisting of trifloxystrobin, picoxystrobin, pyraclostrobin, dimoxystrobin, and a strobilurin derivative.

Group II, claim(s) 7, drawn to a fungicidal mixture as claimed in claim 1, wherein the weight ratio of prothioconazole of formula I to trifloxystrobin, picoxystrobin, pyraclostrobin, dimoxystrobin, and strobilurin derivative is for each individually from 20:1 to 1:20.

Group III, claim(s) 8-9 and 12, drawn to a method a method for controlling harmful fungi, which comprises treating the harmful fungi, their habitat or the plants, seeds, soils, areas, materials or spaces to be kept free from them with an antifungal mixture comprising prothioconazole and at least one other fungicidal compound or its salts or adducts, selected from the group consisting of trifloxystrobin, picoxystrobin, pyraclostrobin, dimoxystrobin, and a strobilurin derivative.

Group IV, claim(s) 13, drawn to a fungicidal kit for controlling harmful fungi comprising prothioconazole and at least one compound selected from trifloxystrobin, picoxystrobin, pyraclostrobin and dimoxystrobin.

4. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

- The special technical feature for Groups I (and III) and II (or IIV) is not shared. In particular, the special technical feature of Group I is a composition comprising the compound prothioconazole and at least one other fungicidal compound selected

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trifloxystrobin, picoxystrobin, pyraclostrobin, dimoxystrobin, and a strobilurin derivative.

The special technical feature of Group II is a composition which includes all of the fungicidal compounds together at a specific weight percentage with respect to prothioconazole whereas Group I does not require the inclusion of each strobilurin compound. The special technical feature of Group III is a kit comprising the compound prothioconazole and at least one compound selected from trifloxystrobin, picoxystrobin, pyraclostrobin and dimoxystrobin. Group III is materially different from Group I because Group I potentially requires a strobilurin derivative (compound VI) whereas Group III does not. As each of these Groups possesses different modes of operation to function in addition to having structurally different properties, the inventions of Groups of inventions herein lack unity.

- Groups I and III share a common feature of a composition comprising prothioconazole and at least one other fungicidal compound or its salts or adducts, selected from the group consisting of trifloxystrobin, picoxystrobin, pyraclostrobin, dimoxystrobin, and a strobilurin derivative which does not provide a contribution over the prior art as it is disclosed by Wachendorff et al. (US 6787567). The reference specifically suggest a composition comprising prothioconazole and at least one other fungicidal compound selected from the group consisting of trifloxystrobin, picoxystrobin, pyraclostrobin, dimoxystrobin, and a strobilurin derivative, specifically that of trifloxystrobin.

Therefore, the reference specifically suggests using the common elements as claimed and the Groups from above lack unity.

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5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

6. The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

7. If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

8. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

#### ***Election of Species***

9. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

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The species are as follows:

- (A) Fungicidal compounds (i.e. trifloxystrobin, picoxystrobin, pyraclostrobin, etc.)

10. Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election. Note, the species election is required only if Applicant elects one of Groups I, III or IV for examination on the merits.

11. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

12. The following claim(s) are generic: 1-6, 8-9 and 11-13.

13. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the reasons evidenced above.

#### ***Correction of Inventorship***

14. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kyle Purdy/  
Examiner, Art Unit 1611

  
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